CORRESPONDENCE.

DEED OPERATING AS A WILL.

Editor Virginia Law Register:

In your issue of November last (4 Va. Law Reg. 474) in a note on "deeds to take effect at death of grantor" the proposition is stated and authorities cited to sustain it, that a clause in a deed that it is to take effect at the death of the grantor renders the instrument testamentary in character and not a deed, and if operative at all it is operative only as a will. The cases cited are numerous and seem fully to sustain that view, but it is respectfully submitted that a construction of such a clause which would give it the effect of a reservation of a life interest to the grantor, is more consonant with reason, and not contrary to well established rules of construction.

Where the meaning is doubtful, a deed is to be construed adversely to the grantor. His evident intention, however, should prevail, and this intention is to be gathered from the whole instrument. Where two clauses in a deed are repugnant the first should prevail (2 Minor's Inst. 705); *Blair* v. *Muse*, 83 Va. 238.) The law favors the vesting of estates at the earliest moment.

The true test to determine whether the instrument is a deed or a will is whether it was the grantor's intention, as gathered from the whole instrument, giving effect, if possible, to all the language used, that the interest granted should vest immediately, the enjoyment thereof being postponed to a future time, or that the grant itself should only take effect at the death of the grantor.

It is a well settled rule of construction that when a party executes and acknowledges as solemn an instrument as a deed, he is held to have intended to convey something, and where any construction not unreasonably inconsistent with the words used will avoid an absurdity or a nullity, such construction will be adopted.

By the granting clause a present interest is conveyed; coming after this, the provision that the deed is not to take effect until the grantor's death, can be effective only as a reservation of a life estate, unless we adopt a construction that nullifies the granting clause, and everything that went before or comes after. Such a construction would be technical, and the reason of the rule was destroyed long ago when section 2418 of the Code, providing that any estate may be made to commence *in futuro*, by deed, in like manner as by will, became the law of Virginia.

From the granting clause it clearly appears that a present interest was granted; whether by the later provision it was intended to reserve a life estate or the whole estate, is doubtful. *Ut res valeat, magis quam pereat.*

There seem to be no Virginia decisions in point, but the cases cited below are late decisions from courts of high standard, and are well reasoned and convincing.

A warranty deed by father to daughter, reciting that 'it is only to take effect at the death of grantor' is not void as being a testamentary devise by deed, but conveys the fee to the grantee, subject to a life estate in the grantor. *Harshbarger* v. *Carroll* (Ill.), 45 N. E. 563. An instrument executed with all the formalities of a warranty deed is not to be rendered testamentary by a clause therein that it is not to take effect until the death of the grantor, but creates a present interest in

the grantee, postponing the full enjoyment until the grantor's death. *Wilson* v. *Carrico* (Ind.), 40 N. E. 50. Where the grantor reserves no power of disposition or revocation, it is a deed and not a will, though it is provided that it is not to take effect until the grantor's death. *Jenkins* v. *Adcock* (Texas), 27 S. W. 21.

The provision 'this deed to go into effect after the death of the grantor, she claiming her right to hold the land so long as she lives,' does not render the paper testamentary. *Seals* v. *Pierce* (Ga.), 10 S. E. 589. See also *White* v. *Hopkins* (Ga.), 4 S. E. 863. This is a well reasoned decision.

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MARRIED WOMEN'S CONTRACTS.

Editor Virginia Law Register:

In response to the request in your November issue, for a general expression of opinion on the subject of the contractual powers of married women under chapter 103 of the Virginia Code, I beg to submit the following:

What estate is made a married woman's separate estate?

(1) All real and personal estate to which a woman hereafter marrying is entitled, at the time of her marriage.

(2) All real and personal estate, etc., which any married woman may hereafter acquire, or hereafter become entitled during coverture, etc.

(3) All the products and earnings of trade, business, work and labor.

All real and personal estate "*hereafter*" acquired, or hereafter become entitled to, is made separate estate, as much as all real and personal estate to which a woman is entitled, "*at the time of marriage.*"

A married woman may make contracts (1) In respect to her trade, business, labor, services, or upon the faith and credit of same; and (2) In respect to her estate which is made separate estate, or upon its faith and credit; and, consequently, a married woman may sue and be sued upon any contract she has the power to make.

Every contract of a married woman is made with reference to her estate which is made separate estate as a source of credit. As products and earnings of her trade, business, labor and services is made her separate estate, she contracts in respect to such products and earnings, because the same is her separate estate; but in addition, she may contract in respect to her trade, business, labor and services, which are something entirely different from, and no part of, her separate estate.

I have said, a married woman may contract with reference to and in respect to her estate which is made her separate estate by law, as a source of credit; but all estate, real and personal, rights of action, damages for a wrong and compensation for property taken for public use, to which a woman is entitled at the time of her marriage, is only a *part* of her estate, made her separate estate, as a source of credit, with reference to and in respect to which she may contract.

All will admit that she may contract with reference to and in respect to *this* part of her separate estate. But the question, as I understand it, is, may she contract with reference to and in respect to the *other* part of her estate, which is made separate estate, as a source of credit, namely, all estate, real and personal, rights of action, damages for wrong and compensation for property taken for public use,